



EL426888054US

PATENT

IN THE UNITED STATES PATENT AND  
TRADEMARK OFFICE

#9/IDS.  
R. Tyson  
12/15/00

Applicant: Mario DiMarco  
Serial No.: 09/224,340  
Filing Date: December 31, 1998  
Title: MODIFIED IMA CABINET  
ARCHITECTURE

Docket No.: 46180.3900  
Client Ref: A62-17022-US  
Group Art Unit: 2841  
Examiner: Dinh, T.

INFORMATION DISCLOSURE STATEMENT

Honorable Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

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TECHNOLOGY CENTER 2800

Dear Honorable Commissioner:

In accordance with the duty of disclosure under 37 C.F.R. §1.56 and pursuant to 37 C.F.R. §§1.97-1.98, the reference or references listed and identified on the attached PTO-1449 based form are being submitted herewith for consideration by the Examiner. A copy of the listed reference is included herewith.

The reference or references are being cited only in the interest of candor and without any admission that they constitute statutory prior art or contain matter which anticipates the invention or which would render the same obvious, either singly or in combination, to a person of ordinary skill in the art.

This Information Disclosure Statement (IDS) is being filed under 37 C.F.R. §1.97(c)(1) before the mailing date of a final action, therefore a fee of \$240.00 is enclosed via Snell & Wilmer check number 282826. If a final office action is mailed before the mailing of this correspondence or Applicant has overlooked any fees, the Commissioner is hereby authorized to

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debit Deposit Account no. 19-2814 for the same. **A duplicate copy of this Information Disclosure Statement is enclosed for this purpose.**

If there are any questions concerning this IDS, the Examiner is requested to contact the undersigned. If it is determined that this IDS has been filed under the wrong rule, the United States Patent and Trademark Office is requested to consider this IDS under the proper rule (with a petition if necessary) and charge the appropriate fee to Deposit Account No. 19-2814.

Respectfully submitted,

By: S. Shah 11-21-00  
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INFORMATION DISCLOSURE STATEMENT PURSUANT TO 37 C.F.R. §§ 1.97-1.98

Assistant Commissioner of Patents  
Washington, D.C. 20231

Dear Assistant Commissioner:

In accordance with the duty of disclosure under 37 C.F.R. § 1.56 and 37 C.F.R. §§ 1.97-1.98, Applicant hereby notifies the U.S. Patent and Trademark Office of the following pre-critical date activities as supported by the attached affidavits and exhibits:

**The On-Sale Bar as Defined by the Federal Circuit**

The policies underlying 35 USC § 102 call for prompt disclosure of inventions. The Federal Circuit formally and unequivocally repudiated the “reduction to practice” test for purposes of analyzing on sale bar issues.<sup>1</sup> Accordingly, until an inventor has a basis for his confidence that the invention will perform for its intended purpose, there is no proven invention to disclose.<sup>2</sup> Furthermore, the totality of the circumstances must be considered when determining whether a particular activity constitutes an invalidating sale or offer for sale.<sup>3</sup>

<sup>1</sup> See UMC Electronics Company v. U.S., 816 F.2d 647, 2 USPQ2d 1465 (Fed. Cir. 1987), cert. Denied, 484 U.S. 1025 (1988).

<sup>2</sup> See Manville Sales Corp. v. Paramount Systems, Inc., 917 F.2d 544, 16 USPQ2d 1587, 1592 (Fed. Cir. 1990).

<sup>3</sup> Micro Chemical, Inc. v. Great Plains Chemical Co., 103 F.3d 1538, 1544 (C.A. Fed. 1997).

Factors to be considered in making such a determination include: 1) the level of development of the invention, and 2) the nature of the invention.<sup>4</sup>

The United States Supreme Court elaborated on the determination of when an “on-sale bar” has occurred.<sup>5</sup> The Court stated that the on-sale bar applies when two conditions are satisfied prior to a critical date: 1) the product is the subject of a commercial offer for sale, and 2) the invention is ready for patenting. “The thrust of the on-sale inquiry is whether the inventor thought he had a product which could be and was offered to customers”.<sup>6</sup> The first condition is considered under conventional “offer for sale” reasoning.<sup>7</sup> The second condition, “ready for patenting”, involves considering circumstances such as whether there has been proof of reduction to practice and/or preparation of drawings or other description, which would enable one skilled in the art to practice the invention.<sup>8</sup>

The pre-critical date meeting (before December 1997) between Honeywell and Airbus merely provided Airbus a survey of “up and coming” technology in the avionics industry. Thus, in considering the totality of the circumstances and the standard under Pfaff v. Wells Electronics, Inc., the mere participation of Airbus in a meeting with Honeywell does not convert the activity to a public use or sale.

#### The Factual Background Surrounding the Present Application

On December 31, 1998, the subject patent application entitled “Modified IMA Cabinet Architecture” was filed with the United States Patent and Trademark Office in the name of inventor Mario DiMarco.<sup>9</sup> As discussed in the specification, conventional integrated modular avionics (IMA) cabinets require an air supply, complicated circuit interfaces wired with harnesses, and line replaceable units, all of which take up considerable space and are difficult to repair and/or reconfigure. For example, conventional IMA cabinets have modules, which each house a printed circuit board (PCB) individually enclosed to protect the PCB from

<sup>4</sup> Id.

<sup>5</sup> Pfaff v. Wells Electronics, Inc., 525 U.S. 55, 67-68, 119 S.Ct. 304, 311-12 (1998).

<sup>6</sup> Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc., 984 F.2d 1182, 1187 n.5, 25 USPQ2d 1561, 1565 n.5 (Fed. Cir. 1993).

<sup>7</sup> Pfaff at 311-12.

<sup>8</sup> Id. at 312.

<sup>9</sup> Affidavit of Mario DiMarco, paragraph 1.

electromagnetic interference (EMI) or radio frequency interference (RFI). However, individually enclosing the modules may be costly. In addition, using an air supply may be cumbersome and expensive. Also, such conventional modules are interconnected to each other and to wiring harnesses of the airplane through a circuit interface, making them complicated and space consuming.<sup>10</sup>

The subject application discloses an IMA cabinet having a chassis with slots for receiving PCB modules, and a rear panel for connecting wire harnesses, connectors, and the like. The chassis also has ventilation holes for cooling the PCB modules. The PCB modules have a front panel with screws for securing the PCB modules to the chassis, and retractable handles for transporting the PCB modules. The IMA cabinet also includes a seal which is resistant to EMI and RFI.<sup>11</sup>

Oftentimes, in an industry as specialized as the avionics industry, potential customers meet with companies in the business of providing avionics systems in order to survey technologies under development.<sup>12</sup> Such meetings are not for the purpose of consummating a sale (or even offering goods for sale), but rather to inform and educate potential customers on the future of the avionics industry.<sup>13</sup> In essence, such meetings provide a preview of ideas that may later develop in the avionics industry.<sup>14</sup>

On July 2, 1997, Mario DiMarco, Parm Narveson, and Khosrow Youssefi (representatives from Honeywell International Inc.) met with representatives from Airbus.<sup>15</sup> The meeting provided Airbus a survey of up and coming avionics technology.<sup>16</sup> Since Airbus' purpose in meeting with Honeywell was only for sampling up and coming technology, at no time did Honeywell and Airbus discuss offering for sale or the purchasing of such technology.<sup>17</sup>

In fact, Honeywell merely presented a conception of ideas for improving current avionics technology as evidenced by the presentation presented to Airbus in July 1997.<sup>18</sup> The

<sup>10</sup> Present Application, p. 1, line 18 to p. 2, line 16.

<sup>11</sup> Present Application, p. 2, line 19 to p. 3, line 9.

<sup>12</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 2.

<sup>13</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 2.

<sup>14</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 2.

<sup>15</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 3.

<sup>16</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 3.

<sup>17</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 4.

<sup>18</sup> Exhibit 1, and Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 5.

presentation to Airbus focused on features of various avionics systems, both existing and under development.<sup>19</sup> For example, the presentation overviewed considerations in packaging of PCBs, including line replaceability, an A/C cooling interface, environmental requirements (e.g., EMI, thermal, and vibration), and interconnect complexity.<sup>20</sup> Honeywell portrayed card cages in comparison to modules and line replaceable units.<sup>21</sup> Thus, the meeting served to educate and inform Airbus of new developments in the avionics technology.

### **Conclusion**

The meeting on July 2, 1997 between Honeywell and Airbus merely provided Airbus a survey of up and coming avionics technology. Thus, inasmuch as the present application was filed on December 31, 1998 (more than one year after the July 1997 meeting with Airbus), the application is not affected by the foregoing activities.

The submission of this Statement is not to be construed as a representation that a search has been made or that no other material information may exist. Moreover, the submission of the listed documents and disclosure of the pre-critical date events is not intended as an admission that any such document constitutes prior art against the claims of the present application nor intended as an admission that any of the foregoing events constitutes a public use or sale.

Applicant reserves the right to dispute any of the listed documents as prior art and the events as a disabling §102 bar. Further, Applicant does not waive any right to take any action that would be appropriate to antedate or otherwise remove any listed document as a competent reference against the claims of the present application.

<sup>19</sup> Affidavits of Mario DiMarco, Parm Narveson, and Khosrow Youssefi, paragraph 5.

<sup>20</sup> Exhibit 1.

<sup>21</sup> Exhibit 1.

DATED this 21 day of November, 2000.

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